

THE UNIVERSITY OF CHICAGO PRESS

U.S. - DISTRICT COURT, S.D.

FILED

MAY 30 1945

CLERK OF COURT

No. 1012

In the Supreme Court of the United States

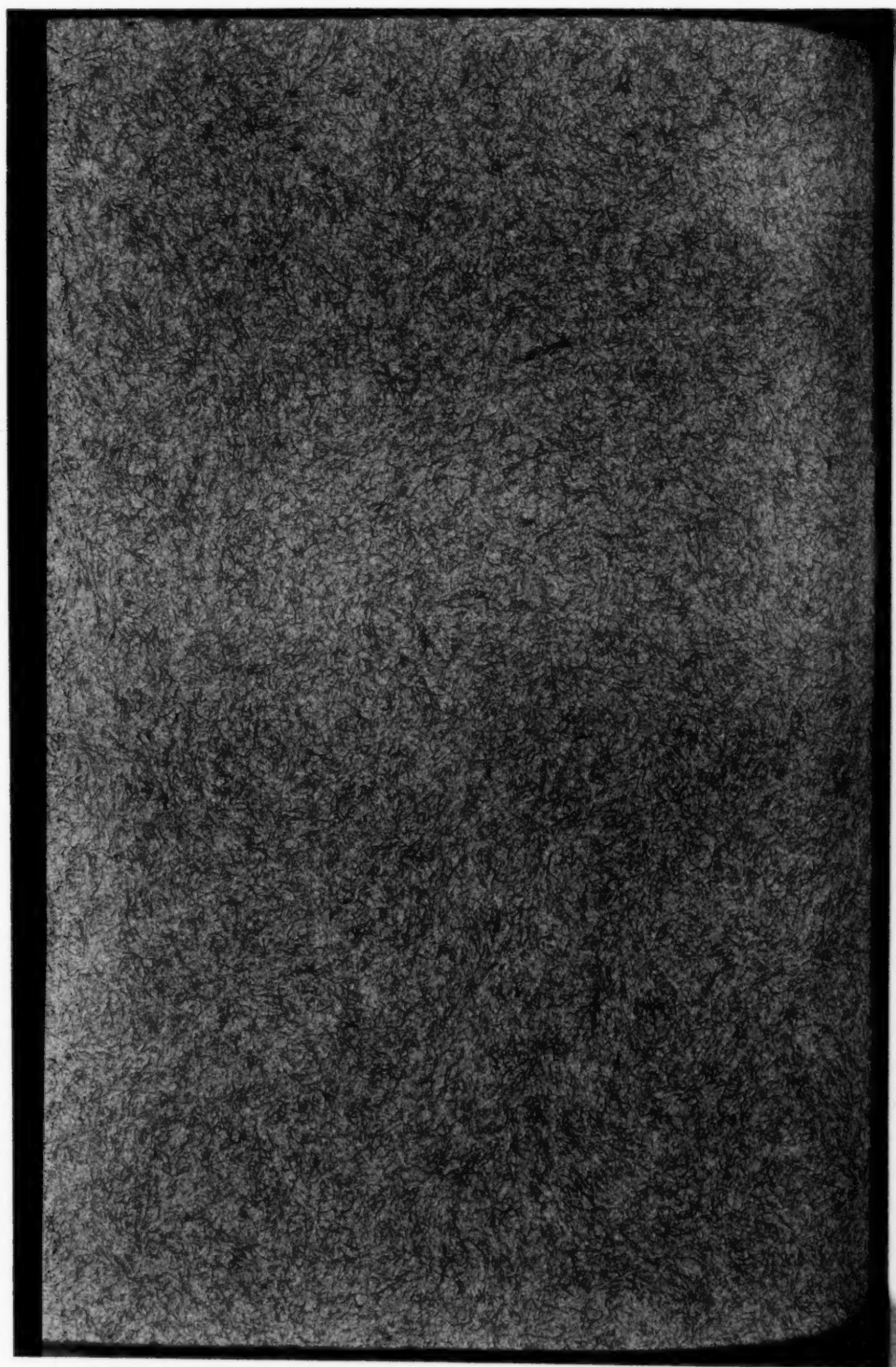
OCTOBER TERM, 1944

HONORABLE PIERSON M. HALL, JUDGE OF THE  
UNITED STATES DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF CALIFORNIA, PETITIONER

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT

BEFORE THE UNITED STATES IN OPPOSITION



## INDEX

Opinions below .....	Page
Jurisdiction .....	1
Question presented .....	2
Statutes involved .....	2
Statement .....	2
Argument .....	8
Conclusion .....	23

### CITATIONS

#### Cases:

<i>Booth v. Fletcher</i> , 101 F. 2d 676, certiorari denied, 307 U. S. 628 .....	15
<i>Callin v. United States</i> , No. 419, October Term 1944, decided February 26, 1945 .....	4
<i>Danforth v. United States</i> , 308 U. S. 271 .....	21, 22
<i>Moody v. Wickard</i> , 136 F. 2d 801, certiorari denied, 320 U. S. 775 .....	22
<i>Oakland v. United States</i> , 124 F. 2d 959 .....	4
<i>Shushan v. United States</i> , 117 F. 2d 110, certiorari denied, 313 U. S. 574 .....	16
<i>Sutherland v. International Ins. Co. of New York</i> , 43 F. 2d 969, certiorari denied, 282 U. S. 890 .....	15
<i>United States v. Amazon Industrial Chemical Corp.</i> , 55 F. 2d 254 .....	16
<i>United States v. Atlantic Commission Co.</i> , 45 F. Supp. 187 .....	11
<i>United States v. Certain Lands, etc.</i> , 57 F. Supp. 157 .....	19
<i>United States v. Fee</i> , 138 F. 2d 158 .....	18, 21
<i>United States v. Johnson</i> , No. 43, October Term 1944 .....	17
<i>United States v. Marin</i> , 136 F. 2d 388 .....	18
<i>United States v. Martins</i> , 288 Fed. 991 .....	16
<i>United States v. Merchants Transfer &amp; Storage Co.</i> , 144 F. 2d 324 .....	18
<i>United States v. 1,960 Acres of Land</i> , 54 F. Supp. 867 .....	1, 6
<i>United States v. San Jacinto Tin Co.</i> , 125 U. S. 273 .....	12
<i>United States v. Sheffield Farms Co.</i> , 43 F. Supp. 1 .....	15, 16
<i>United States v. Sunset Cemetery Co.</i> , 132 F. 2d 163 .....	4
<i>Wachovia Bank &amp; Trust Co. v. United States</i> , 98 F. 2d 609 .....	21
<i>Westchester County v. United States</i> , No. 251, October Term 1944, certiorari denied October 9, 1944 .....	18

## II

### Statutes:

	Page
Act of September 24, 1789, sec. 35, 1 Stat. 73, 92 (Judiciary Act).....	10
Act of August 2, 1861, 12 Stat. 285.....	11
Act of June 22, 1870, sec. 8, 16 Stat. 162 (Department of Justice Act).....	11, 12
Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. sec. 257 (General Condemnation Act).....	8, 9, 13
Act of June 30, 1906, 34 Stat. 816.....	11
Act of February 26, 1931, 46 Stat. 1422, 40 U. S. C. sec. 258c.....	23
Act of March 27, 1942, 56 Stat. 177, 50 U. S. C. App., Supp. III, 632 (Second War Powers Act).....	2, 8
Act of July 1, 1943, 57 Stat. 271.....	20
Act of June 28, 1944, Public No. 365.....	20
5 U. S. C.:	
Sec. 22.....	11
Sec. 291.....	12
Sec. 302.....	12
Sec. 306.....	13
Sec. 309.....	13, 21
Sec. 310.....	13, 16, 21
Sec. 311.....	14, 21
Sec. 312.....	14
Sec. 315.....	14
Sec. 316.....	14
Sec. 317.....	15
28 U. S. C. sec. 485.....	11
Miscellaneous:	
Exec. Order No. 6166 of June 10, 1933, 5 U. S. C. secs. 124-132.....	9, 10, 23
1 Op. A. G. 608.....	11
38 Op. A. G. 98.....	12
38 Op. A. G. 124.....	12
Third Annual Report of Special Committee Investigating the National Defense Program, 78th Cong., 2d sess., S. Rept. No. 10, pt. 16, pp. 121-132.....	20

# In the Supreme Court of the United States

OCTOBER TERM, 1944

---

No. 1012

HONORABLE PEIRSON M. HALL, JUDGE OF THE  
UNITED STATES DISTRICT COURT FOR THE SOUTH-  
ERN DISTRICT OF CALIFORNIA, PETITIONER

v.

UNITED STATES OF AMERICA

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE NINTH  
CIRCUIT

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

---

## OPINIONS BELOW

The opinion of the circuit court of appeals (R. 91-98) in the mandamus proceeding is reported in 145 F. 2d 781. The opinion of the district court in the condemnation suit out of which the mandamus proceedings arose is reported in 54 F. Supp. 867, *sub nom. United States v. 1,960 Acres of Land*.

**JURISDICTION**

The judgment of the circuit court of appeals sought to be reviewed was entered on November 25, 1944 (R. 90). A petition for rehearing was denied December 30, 1944 (R. 99). The petition for a writ of certiorari was filed on March 5, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTION PRESENTED**

Whether the Attorney General of the United States has authority to assign condemnation cases to Special Attorneys of the Department of Justice to be handled independently of the United States Attorney's office.

**STATUTES INVOLVED**

The relevant statutes defining the functions and powers of the Attorney General and the United States Attorneys are set out in the Argument, *infra*, pp. 8-9, 11-15.

**STATEMENT**

The Secretary of War on November 3, 1942, requested the Attorney General of the United States to institute condemnation proceedings under the Second War Powers Act of March 27, 1942, 56 Stat. 177, 50 U. S. C. Supp. App., III, 632, to acquire the fee title to and immediate possession of 1,960 acres of land in Riverside

County, California, for use in connection with the Desert Central Air Support Command Base (R. 17-18). By an air mail letter written the same day "Mr. Irl D. Brett, Special Assistant to the Attorney General, Federal Building, Los Angeles, California,"<sup>1</sup> was directed to institute the requested proceedings, this letter being signed, "For the Attorney General" by "NORMAN M. LITTELL, Assistant Attorney General" (R. 19-20). Mr. Brett filed the requested proceeding on November 9, 1942, the complaint being signed by "Leo V. SILVERSTEIN, United States Attorney;<sup>2</sup> IRL D. BRETT, Special Assistant to the Attorney General; SYLVAN G. BAY, Special Attorney, Lands Division, Department of Justice, By SYLVAN G. BAY, Attorneys for Plaintiff" (R. 21-29). Judge Peirson M. Hall signed an order for immediate possession the same day. Included in the proceedings were Tracts 21 and 22 containing 20 acres owned by John J. Zelter, *et ux.*, subject to certain tax claims by the State of California and

---

<sup>1</sup> Because of the large volume of condemnation work in Southern California arising out of the war, the Department of Justice had established a special office in Los Angeles to handle condemnation matters in that area. Mr. Irl D. Brett, Special Assistant to the Attorney General, was placed in charge of this office with a staff of special attorneys particularly familiar with condemnation law.

<sup>2</sup> Until the summer of 1943 the name of the United States Attorney was used in all condemnation pleadings filed in the Southern District of California.



Riverside County. These tracts were embraced in Declaration of Taking No. 2 filed January 6, 1943, \$20 being deposited in the court as estimated compensation therefor (cf. R. 34-35). No judgment was entered on the declaration of taking.<sup>3</sup>

In August 1943 it was deemed advisable, for administrative reasons, to place all condemnation matters in the Southern District of California under the direct supervision of Mr. Brett. After a three way exchange of correspondence between the Attorney General, the United States Attorney, and Mr. Brett, the Attorney General on October 19, 1943, formally confirmed the separation of Lands Division work in Southern California from the office of the United States Attorney, and delegated to and directed Mr. Brett to exercise "plenary authority to sign and file on behalf of the United States, any and all pleadings, briefs, papers or documents in the District Court in and for

---

<sup>3</sup> It is Judge Hall's position, and on this point he is undoubtedly correct, that title passes upon the filing of a valid declaration of taking. *United States v. Sunset Cemetery Co.*, 132 F. 2d 163 (C. C. A. 7); *Catlin v. United States*, No. 419, October Term, 1944, decided by this Court February 26, 1945. He therefore regards the entry of a judgment on a declaration of taking as a useless act. Such judgments are, however, quite useful for recordation and other purposes, and all District Judges throughout the United States, except two or three, have acquiesced in the Lands Division practice of obtaining formal "judgments" on declarations of taking. See *Oakland v. United States*, 124 F. 2d 959 (C. C. A. 9); cf. *Catlin v. United States*, No. 419, October Term, 1944, decided February 26, 1945.

the Southern District of California which you may consider necessary or proper for the conduct of such Lands Division cases as have been, or may be in the future, placed and maintained under your supervision by the Department of Justice. Other attorneys and Special Attorneys of the Department of Justice assigned to your office may also appear of record in such proceedings and cases and otherwise participate in the conduct thereof as you may authorize and direct." (R. 9-10.)

A photostatic copy of this letter was filed in the District Court for the Southern District of California on November 22, 1943, together with a letter by Mr. Brett designating M. D. Zimmerman as co-counsel in the Riverside County condemnation proceeding (R. 11, 33, 87).

Mr. Zimmerman thereupon presented to the court a "stipulation for judgment" on Tracts 21 and 22, in the amount deposited in court, this stipulation being signed by Riverside County, by the State of California, and by John J. Zelter and Pearl M. Zelter (R. 34-37). The court, Judge Peirson M. Hall presiding, took the request under advisement.

On January 4, 1944, Judge Hall handed down an opinion in which he held that the "District Attorney must 'initiate and prosecute' condemnation proceedings on behalf of the Government" in order to give the court jurisdiction and that when

other persons are appointed "to assist the District Attorney" they must be "'specially appointed' and 'specially directed' by the Attorney General in each case." *United States v. 1,960 Acres of Land*, 54 F. Supp. 867, 882.

In order to avoid the question whether Mr. Brett could delegate authority to Mr. Zimmerman, Mr. Brett thereupon personally presented the matter to the District Judge who still refused to assume jurisdiction "in view of the fact that counsel is regarded by the Court as not having the power to represent the U. S. Government" (R. 38).

Not desiring to resort to mandamus unless all other remedies were exhausted, Mr. Brett asked the Senior District Judge to reassign the case to one of the other judges for the Southern District of California. Senior District Judge McCormick, having ascertained that Judge Hall was unwilling to have the case reassigned, refused Mr. Brett's request. (R. 39-40.)

In a further effort to narrow the issues the Attorney General addressed to Mr. Brett and to Mr. Zimmerman on February 4, 1944, specific authorization to handle the case immediately involved (R. 13-14). This letter was filed with the District Court on February 9, 1944, together with a motion formally requesting Judge Hall to assume jurisdiction of the Government's motion to fix the

compensation for Tracts 21 and 22 in the amounts agreed to by the parties, and to take such other proceedings as the court should deem meet in the premises to fix and determine the just compensation to be paid for the taking of these tracts (R. 41-43). Again the court took the matter under advisement. On March 13, 1944, Judge Hall denied the motion on the grounds set forth in his opinion of January 4, 1944 (R. 44-45).

Since refusal by Judge Hall to recognize the Attorney General's authority to assign condemnation cases to Special Attorneys seriously imperiled the orderly handling and disposal of condemnation matters in the Southern District of California and in several other districts where a similar practice prevailed, and since the decision, based as it was on jurisdictional grounds, would if allowed to stand cast doubt on title to tens of thousands of acres of other lands acquired in condemnation proceedings not signed by the United States Attorneys, the United States filed a petition for mandamus in the Circuit Court of Appeals for the Ninth Circuit to compel Judge Hall to recognize the Attorney General's authority to assign condemnation matters to Special Attorneys of the Department of Justice to be handled independently of the United States Attorney's office, and to assume jurisdiction over pleadings signed and tendered on behalf of the United States by

such attorneys (R. 1-16). The court below entertained the petition (R. 3), issued an order to show cause (R. 64), and sustained the authority of the Attorney General to assign particular kinds of litigation to Special Attorneys of the Department of Justice to be handled independently of the United States Attorney's office (R. 91-98). The writ of mandamus issued accordingly (R. 90). A petition for rehearing having been subsequently filed and denied (R. 99), petitioner now seeks review by certiorari.

#### ARGUMENT

1. Contrary to petitioner's contentions (Pet. 15-26), the Attorney General of the United States has ample statutory authority to assign condemnation cases to Special Attorneys of the Department of Justice to be handled independently of the United States Attorney's office.

The Second War Powers Act of March 27, 1942, 56 Stat. 177, 50 U. S. C. App., Supp. III, 632, under which the present condemnation proceedings were brought, expressly provides that such proceedings are to be in accordance with the General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257. That Act provides that in every case in which the Secretary of the Treasury or other Government officer is authorized to procure real estate for public uses, he shall be authorized to acquire the same for the United

States by condemnation. The Act also provides that the United States District Courts of the districts wherein such real estate is located shall have jurisdiction of proceedings for such condemnation. It further states that it "shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, \* \* \* or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice."

Executive Order No. 6166 of June 10, 1933, 5 U. S. C. 124-132, issued pursuant to the Government Reorganization Acts of 1932 and 1933, further provides:

The functions of prosecuting in the courts of the United States claims and demands by, and offenses against, the Government of the United States and of defending claims and demands against the Government, and of supervising the work of United States attorneys, marshals, and clerks in connection therewith, now exercised by any agency or officer, are transferred to the Department of Justice.

As to any case referred to the Department of Justice for prosecution or defense in the courts, the function of decision whether and in what manner to prosecute, or to defend, or to compromise, or to appeal, or to abandon prosecution or defense, now exercised by any agency or officer, is transferred to the Department of Justice.

In 38 Op. A. G. 124 (1934) Attorney General Cummings placed the following construction on this Executive Order:

The effect of the above quoted provision is to vest in the Attorney General exclusive control of any case after it has been referred to his department.

It therefore follows that when the Secretary of War requested the Attorney General on November 3, 1942, to institute condemnation proceedings to acquire land needed for use in connection with the Desert Control Air Support Command Base, exclusive control of such proceedings was thereby vested in the Attorney General.

In discharging the functions thus vested in him the Attorney General is not required to act through the United States Attorney. Congress has conferred on the Attorney General broad authority to determine who shall represent the United States in the handling of particular cases in the federal district courts. He may operate through the Solicitor General, through Special Assistants to the Attorney General or through Special Attorneys of the Department of Justice, independently of the United States Attorney's office. This fact is clear from an examination of the relevant statutes.

The office of the United States Attorney was created by Section 35 of the Judiciary Act of

September 24, 1789, 1 Stat. 73, 92. His duties were there defined in much the same language as that now used in 28 U. S. C. 485:

It shall be the duty of every district attorney, to prosecute, in his district, all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States are concerned \* \* \*.

The office of Attorney General was established by the same section of the Judiciary Act. His functions, as there defined, were quite limited and included no supervisory control over the United States Attorneys. 1 Op. A. G. 608 (1823). This chaotic situation was remedied by the Act of August 2, 1861, 12 Stat. 285, and by the Act of June 22, 1870, 16 Stat. 162, creating the Department of Justice and conferring on the Attorney General the general superintendence and direction of all district attorneys. Further powers were delegated to the Attorney General by the Act of June 30, 1906, 34 Stat. 816. See *United States v. Atlantic Commission Co.*, 45 F. Supp. 187, 191 (E. D. N. C.). As a result of this legislation the Attorney General's powers within the various districts of the United States have been much broadened. The relevant sections of the Code define his powers and duties as follows:

5 U. S. C. 22: The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its



officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.<sup>5</sup>

5 U. S. C. 291: There shall be at the seat of government an executive department to be known as the Department of Justice, and an Attorney General, who shall be the head thereof.<sup>6</sup>

5 U. S. C. 302: Whenever the Solicitor General, an attorney, an assistant attorney, a special assistant to the Attorney General, or any other officer of the Department of Justice is sent by the Attorney General to any State, District, Territory, or country to attend to any interest of the United States the person so sent shall receive, in addition to his salary and the necessary expenses of travel, his actual expenses incurred for sub-

---

<sup>5</sup> Section 8 of the Department of Justice Act of June 22, 1870, 16 Stat. 162, 163, which is one of the sources of 5 U. S. C. 22, reads as follows: "That the Attorney-General is hereby empowered to make all necessary rules and regulations for the government of said Department of Justice, and for the management and distribution of its business."

<sup>6</sup> This Court has pointed out that Congress in providing for an Attorney General "must have had reference to the similar office with the same designation existing under the English law," and that "when acts of Congress use words which are familiar in the law of England, they are supposed to be used with reference to their meaning in that law." *United States v. San Jacinto Tin Co.*, 125 U. S. 273, 280. Consequently, "the primary broad power of the Attorney General is in part inherent, appertaining to the office, and in part derived from various statutes and decisions." 38 Op. A. G. 124, 126 (1934) ; 38 Op. A. G. 98, 99 (1934).

sistence, not to exceed \$6 per day while absent from the seat of government, the account thereof to be verified by affidavit.

5 U. S. C. 306: The officers of the Department of Justice, under the direction of the Attorney General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of departments, and the heads of bureaus and other officers in the departments, to discharge their respective duties; \* \* \*.<sup>7</sup>

5 U. S. C. 309: \* \* \* the Attorney General may, whenever he deems it for the interest of the United States, either in person conduct and argue any case in any court of the United States in which the United States is interested, or may direct the Solicitor General or any officer of the Department of Justice to do so.

5 U. S. C. 310: The Attorney General or any officer of the Department of Justice, or any attorney or counselor specially appointed by the Attorney General under any provision of law, may, when thereunto specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including

---

<sup>7</sup> The War Department, Navy Department, Maritime Commission, and other war agencies, in order to discharge their duties, must acquire land, buildings, etc. The task of acquiring such property for these agencies has been expressly conferred upon the Attorney General by the General Condemnation Act of August 1, 1888, 40 U. S. C. 257 (*supra*, pp. 8-9).

grand jury proceedings and proceedings before committing magistrates, which district attorneys may be by law authorized to conduct, whether or not he or they be residents of the district in which such proceeding is brought.

5 U. S. C. 311: The Attorney General may require any solicitor or officer of the Department of Justice to perform any duty required of the department or any officer thereof.

5 U. S. C. 312: The Attorney General shall, whenever in his opinion the public interest requires it, employ and retain, in the name of the United States, such attorneys and counselors at law as he may think necessary to assist the district attorneys in the discharge of their duties, \* \* \*.

5 U. S. C. 315: Every attorney or counselor who is specially retained, under the authority of the Department of Justice, to assist in the trial of any case in which the Government is interested, shall receive a commission from the head of such department, as a special assistant to the Attorney General or to some one of the district attorneys, or as a special attorney, as the nature of the appointment may require; \* \* \*.

5 U. S. C. 316: The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States

in any suit pending in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States.

5 U. S. C. 317: The Attorney General shall exercise general superintendence and direction over the attorneys and marshals of all the districts in the United States and the Territories as to the manner of discharging their respective duties; \* \* \*.

The effect of the foregoing statutes was well analyzed by Judge Learned Hand in *Sutherland v. International Ins. Co. of New York*, 43 F. 2d 969, 970 (C. C. A. 2), certiorari denied, 282 U. S. 890, where he stated that the Attorney General "may displace district attorneys in their own suits, dismiss or compromise them, institute those which they decline to press. No such system is capable of operation unless his powers are exclusive, or if the Departments may institute suits which he cannot control. His powers must be coextensive with his duties. And so, quite aside from the respectable authority that confirms our view, we should have had no doubt that no suit can be brought except the Attorney General, his subordinate, or a district attorney under his 'superintendence and direction,' appears for the United States."

See also *Booth v. Fletcher*, 101 F. 2d 676 (App. D. C.), certiorari denied, 307 U. S. 628; *United States v. Sheffield Farms Co.*, 43 F. Supp. 1, 3 (S. D. N. Y.)

Under these cases there would seem to be no reason why the Attorney General may not displace the United States Attorney in particular cases by assigning them to special assistants and other departmental officers to be handled independently of the United States Attorney's office. 5 U. S. C. 310 provides that "any officer of the Department of Justice" or "any attorney or counselor specially appointed" may conduct "any kind of legal proceeding, civil or criminal," "when thereunto specifically directed by the Attorney General." Section 310 does not require a specific direction in each case. A specific direction to handle a particular class or *kind* of case is sufficient. "To say that an assistant cannot appear before the grand jury, unless he has been designated by the Attorney General to do so in each particular case, seems to me unnecessarily narrow and technical. \* \* \*

As the Attorney General can unquestionably make case by case designations, to give the statute the narrower interpretation would result only in useless red tape." *United States v. Martins*, 288 Fed. 991 (D. Mass.); cf. *United States v. Amazon Industrial Chemical Corp.*, 55 F. 2d 254 (D. Md.); *Shushan v. United States*, 117 F. 2d 110, 113-114 (C. C. A. 5), certiorari denied, 313 U. S. 574; *United States v. Sheffield Farms Co.*, 43 F. Supp. 1, 2 (S. D. N. Y.). Be that as it may, the Attorney General by letter of February 4, 1944 (R. 13-14) specifically empowered Mr. Brett to appear

as attorney of record for and on behalf of the United States in this particular condemnation proceeding, to prosecute it to a conclusion, and to sign and file all pleadings, stipulations, and other documents therein which he deemed necessary or expedient.

From the foregoing statutory provisions and adjudications, it seems clear that the Attorney General may designate "any officer of the Department of Justice" to handle specific cases in the various district courts of the United States and to that extent displace United States Attorneys.\* This conclusion is in accord with the long continued administrative construction placed on these statutes by the Attorney General, and is especially desirable in condemnation cases.

Condemnation proceedings are somewhat technical and specialized in nature. For this reason a large amount of condemnation work in the field has been handled by Special Assistants to the Attorney General and by Special Attorneys of the Lands Division, the division of the Department of Justice charged with the immediate supervision of condemnation work. With the great increase in federal condemnation proceedings resulting from public works projects commencing in the early

---

\* Compare this Court's observation in *United States v. Johnson*, No. 43, October Term 1944: "Prosecution of federal crimes are under the general supervision of the Attorney General of the United States; United States Attorneys do not exercise autonomous authority."

thirties, the prevention of soil erosion and reforestation programs of a few years later, and the defense and war needs of the present, it has been necessary to establish special staffs of field attorneys to handle condemnation work in those areas where large amounts of land are being acquired for war and other purposes. In some 26 districts of the United States condemnation work is largely handled by Special Attorneys of the Department of Justice, and under the practice which presently prevails in six districts the pleadings are not even signed by the United States Attorney." In many

<sup>9</sup> An examination of the records of this Court in the case of *Westchester County v. United States*, No. 251, October Term 1944, certiorari denied October 9, 1944, will show that the condemnation petition was signed and filed by "Harry T. Dolan, Special Assistant to the Attorney General," and not by the United States Attorney or members of his staff. The Ninth Circuit judicially knew that pleadings in a number of condemnation appeals which it had decided were likewise filed on behalf of the United States by Special Attorneys of the Department of Justice. E. g. *United States v. Marin*, 136 F. 2d 388 (from the Northern District of California); *United States v. Fee*, 138 F. 2d 158 (from the District of Oregon); *United States v. Merchants Transfer & Storage Co.*, 144 F. 2d 324 (from the Western District of Washington). In the last cited case, decided while the present mandamus proceeding against Judge Hall was under advisement, the court pointedly referred to the fact that (p. 325) that suit had been instituted "through a special assistant to the Attorney General." After Judge Hall's decision was published various landowners in the Eastern District of New York, where a similar practice prevails of having condemnation cases handled exclusively by a Special Assistant to the Attorney General, sought to set aside various condemnation

of these districts the headquarters of the condemnation attorneys are located in different buildings from those of the United States Attorneys and occasionally in different cities in closer proximity to some important condemnation project. In such instances it would distinctly impede the work of the Lands Division in condemnation cases, especially war power takings where possession must be obtained as expeditiously as possible, to have to refer pleadings and the scores of other instruments to the United States Attorneys for even formal approval. By means of this administrative setup the time which elapses between the receipt by the Department of a request for condemnation and the subsequent filing of a condemnation proceedings now averages less than five days. In recognition of the speed with which the Lands Division has been able to institute condemnation proceedings and to obtain immediate possession of property, the Truman Committee recommended that more and more of the land which is needed by the Government for war purposes should be acquired by condemnation rather than by direct purchase. Third Annual Report of Special Committee Investigating the

---

judgments on jurisdictional grounds. Judge Inch summarily rejected this contention, saying: "If the case relied on by defendant, *U. S. v. 1960 Acres of Land*, 54 F. Supp. 867, is the reason for such position taken by him, this court regrets that it is unable to agree with such decision." *United States v. Certain Lands, etc.*, 57 F. Supp. 157 (E. D. N. Y.).



National Defense Program, 78th Cong., 2d sess., S. Rept. No. 10, pt. 16, pp. 121-132.

Congress has been fully apprised of this Departmental practice of establishing regional field offices to handle condemnation cases in those areas where large amounts of land are being acquired for war purposes. In fact, in appropriations acts for recent years Congress has required the Department of Justice to make semi-annual reports listing the names of Special Assistants to the Attorney General and describing their duties. See Act of July 1, 1943, 57 Stat. 271, 285; Act of June 28, 1944, Public No. 365. With this information before them it is significant that Congress has prohibited "the establishment and maintenance of permanent regional offices of the Antitrust Division" while at the same time making an appropriation for the Lands Division of \$4,275,000 "for personal services in the District of Columbia and elsewhere." Act of June 28, 1944, Public No. 365.

Authorities relied on by petitioner (Pet. 15-17) for the proposition that the handling of condemnation cases is one of the duties of the United States Attorney merely stand for the principle that such officer is not entitled to any additional compensation for the performance of such functions, it being his duty to render such service when requested by the Attorney General. This does not mean that the Attorney General may not

assign these duties on special occasions to other officers of the Department of Justice. See 5 U. S. C. 309, 310, 311.

2. The last question which petitioner seeks to raise (Pet. 13, 14, 27-33) is not presented by the record in the instant case. In its motion of February 9, 1944 (R. 41-43) the Government did not ask the court to enter judgment in the amount stipulated to by the parties, although such a motion might well have been proper under such decisions as *Danforth v. United States*, 308 U. S. 271, and *Wachovia Bank & Trust Co. v. United States*, 98 F. 2d 609 (C. C. A. 4). It merely requested the court "to accept and assume jurisdiction of this cause and the subject matter of this particular motion," "to fix a time and place for consideration of a Stipulation for Judgment," "to take such other proceedings as the Court shall deem meet in the premises whereby to fix and determine the just compensation to be paid by plaintiff," and "to enter judgment herein, determining the amount of just compensation to be paid by the plaintiff" (R. 42).

Similarly, in the petition for mandamus the relief was limited to a request that Judge Hall be compelled to assume jurisdiction of pleadings filed on behalf of the United States by Special Attorneys of the Department of Justice (R. 15-16). In view of a previous ruling by the Ninth Circuit in another mandamus case (*United States*

v. *Fee*, 138 F. 2d 158), the United States expressly stated in its brief in support of the petition for the writ that "no attempt is here made, or in the motion filed below, to control what action Judge Hall may take on the motion once he undertakes to exercise jurisdiction. \* \* \* Mandamus is sought merely to compel him to assume jurisdiction over pleadings and motions filed on behalf of the United States by attorneys acting under the direction of the Attorney General of the United States" (R. 62). The questions, therefore, whether a court must enter judgment in the amount stipulated to by the parties and whether officers of the United States may enter into such stipulations, are not involved in this case.

The case of *Moody v. Wickard*, 136 F. 2d 801 (App. D. C.), certiorari denied, 320 U. S. 775, relied on by petitioner (Pet. 14, 27) as establishing a conflict, is not in point. In that case no declaration of taking was filed and the determination of the award was merely "an offer subject to acceptance by the condemnor." *Danforth v. United States*, 308 U. S. 271, 284. The district court was, therefore, without jurisdiction to enter a money judgment against the United States. In the instant case a declaration of taking has been filed, the Government is thus "irrevocably committed" to pay just compensation, and the court has jurisdiction to enter a money judgment

against the United States. Act of February 26, 1931, 46 Stat. 1422, 40 U. S. C. 258c. In such circumstances the Attorney General may stipulate as to value or otherwise compromise the litigation pursuant to Executive Order No. 6166, *supra*, p. 9. Thus, the Attorney General in his letter of February 4, 1944 (R. 13-14), quite properly approved the prior stipulations filed in this proceeding, including the stipulation fixing compensation for tracts 21 and 22 in the exact amount deposited in court by the War Department.

#### CONCLUSION

The question presented was correctly decided by the court below, there is no conflict of decisions, and the petition for writ of certiorari should be denied.

Respectfully submitted.

CHARLES FAHY,  
*Solicitor General.*

J. EDWARD WILLIAMS,  
*Acting Head, Lands Division.*

VERNON L. WILKINSON,  
*Attorney.*

MARCH 1944.